

HOUSE BILL REPORT

HB 2778

As Reported by House Committee On:
Judiciary

Title: An act relating to domestic violence.

Brief Description: Concerning domestic violence.

Sponsors: Representatives Goodman, Kessler, Santos, Darneille, Maxwell, Kenney, Kagi, Williams, Rolfes, Appleton, Hudgins, Ericks, Morrell, McCoy, Seaquist, Green, O'Brien, Carlyle, Roberts, Pearson, Nelson and Simpson.

Brief History:

Committee Activity:

Judiciary: 1/18/10, 1/21/10 [DPS].

Brief Summary of Substitute Bill

- Makes a number of changes to the laws relating to domestic violence, including changes in the areas of law enforcement and arrest, no-contact and protection orders, firearms possession, sentencing reforms, treatment and services for perpetrators and victims, and human remains disposition.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts and Ross.

Staff: Courtney Barnes (786-7194).

Background:

Domestic violence includes certain crimes, such as assault, rape, and stalking, when committed by one family or household member against another.

Law Enforcement and Arrest Provisions.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Generally, a police officer is required to arrest a person 16 years of age or older if the officer has probable cause to believe that the person has assaulted a family or household member within the four hours preceding arrest. The officer is required to arrest the person whom the officer believes is the primary physical aggressor. In making this determination, the officer must consider certain factors, such as the comparative extent of injuries inflicted and the history of domestic violence between the parties.

No-Contact Orders.

A defendant arrested or cited for an offense involving domestic violence is required to appear in person before the court. The court must determine the necessity of imposing a no-contact order or other conditions of pretrial release. Upon arrest or conviction of an offense involving domestic violence, a court may enter a no-contact order prohibiting a defendant from contacting the protected party. No-contact orders can be issued without either the request or permission of the protected party.

Protection Orders.

A victim of domestic violence who is 16 years of age or older may petition the court for a civil protection order. A court issuing a protection order may impose a variety of conditions, such as restraining the respondent from having contact with the victim.

Firearms Possession.

Under federal law, certain qualified protection, no-contact, and restraining orders prohibit a person who is subject to an order from possessing a firearm. These orders include those that: (1) were issued after notice and an opportunity to appear; and (2) restrain the person from committing certain criminal acts against an intimate partner.

Sentencing Reforms.

The Sentencing Reform Act (SRA) includes a list of aggravating and mitigating circumstances that a court may consider when imposing a sentence outside the standard sentencing range for a felony offense involving domestic violence. The SRA does not apply to convictions for misdemeanors or gross misdemeanors. Courts of limited jurisdiction may impose a maximum of two years probation following a sentence for a non-felony offense involving domestic violence.

Treatment/Services for Perpetrators and Victims.

The Department of Social and Health Services (DSHS) certifies domestic violence perpetrator programs that: (1) accept perpetrators of domestic violence into treatment to satisfy court orders; or (2) represent themselves as treating domestic violence perpetrators. The DSHS must adopt rules and enforce minimum qualifications for treatment programs.

The Washington Crime Victims' Compensation Program administered by the Department of Labor and Industries provides benefits to victims of criminal acts. Generally, persons injured by a criminal act in Washington are eligible to receive benefits if:

- the criminal act for which compensation is being sought is punishable as a gross misdemeanor or felony;
- the crime was reported to law enforcement within one year of its occurrence or within one year from the time a report could reasonably have been made; and
- the application for crime victims' benefits is made within two years after the crime was reported to law enforcement or the rights of the beneficiaries or dependents accrued.

Human Remains Disposition.

Washington law governs who has the right to control the disposition of a person's remains. Absent a prearrangement filed by the decedent, the right to control the disposition of the remains vests in the following order:

1. the surviving spouse or registered domestic partner;
2. the surviving adult children;
3. the surviving parents of the decedent;
4. the surviving siblings of the decedent; or
5. a person acting as a representative of the decedent under the signed authorization of the decedent.

Summary of Substitute Bill:

Law Enforcement and Arrest Provisions.

For the purposes of identifying the primary physical aggressor, the arresting officer must consider the history of domestic violence of each person involved, including whether the conduct was part of an ongoing pattern of abuse. When funded, the Washington Association of Sheriffs and Police Chiefs must convene a model policy work group to address the reporting of domestic violence to law enforcement in cases where the victim is unable or unwilling to make a report in the jurisdiction where the alleged crime occurred.

No-Contact Orders.

At the time of the defendant's first appearance before the court for an offense involving domestic violence, the prosecutor must provide the court with the defendant's criminal history and history of no-contact and protection orders.

All courts are required to develop policies and procedures to grant victims a process to modify or rescind a no-contact order. The Administrative Office of the Courts (AOC) is required to develop a model policy to assist the courts in implementing this requirement. The AOC must develop a pattern form for no-contact orders issued for offenses involving domestic violence. A no-contact order issued by the court must substantially comply with the pattern form developed by the AOC.

Protection Orders.

New provisions are created to address when a court, issuing protection orders for domestic violence, sexual assault, and harassment, may exercise personal jurisdiction over a nonresident. When issuing a domestic violence protection order, courts may restrain the respondent from cyber stalking or monitoring the actions, location, or communication of the victim by using wire or electronic technology.

Any person 13 years of age or older may petition the court for a domestic violence protection order if he or she is the victim of violence in a dating relationship and the respondent is 16 years of age or older. A petitioner who is under the age of 16 must petition the court through a parent or guardian.

Reconciling No-Contact and Protection Orders.

By December 1, 2011, the AOC must develop guidelines for all courts to establish a process to reconcile duplicate or conflicting no-contact or protection orders issued in Washington. The AOC must provide a report to the Legislature by January 1, 2011, concerning the progress made to develop these guidelines.

Firearms Possession.

The crime of unlawful possession of a firearm in the second degree is amended to add two new circumstances of when a person is prohibited from possessing a firearm. It is unlawful to possess a firearm if the person:

- has been convicted of a misdemeanor crime of harassment, if committed against a family or household member; or
- is subject to a protection, no-contact, or restraining order that: (1) was issued after notice and an opportunity to appear; and (2) restrains the person from committing certain criminal acts against a family or household member of the person or a minor child of the family or household member.

When entering a no-contact order or order for protection in cases of domestic violence that restrains a respondent from committing certain criminal acts against a family or household member or a minor child of the family or household member, a court must: (1) require the respondent to surrender any firearm or other dangerous weapon; and (2) prohibit the respondent from obtaining or possessing a firearm or other dangerous weapon. The AOC must convene a work group to address the issue of transmitting information regarding the revocation of concealed pistol licenses upon the entry of certain no-contact and protection orders. The work group must review the methods currently used to transfer information between certain government agencies concerning the revocation of concealed pistol licenses.

Sentencing Reforms.

Under the SRA, a court may impose an exceptional sentence below the standard sentence range for offenses involving domestic violence if the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense, and the offense is a response to

that coercion, control, or abuse. An aggravating circumstance that permits an exceptional sentence when the offense was part of an ongoing pattern of abuse of the victim is changed to a pattern of abuse involving a victim or multiple victims.

During sentencing for a non-felony offense involving domestic violence, the prosecutor must provide courts of limited jurisdiction with the defendant's criminal history and history of no-contact and protection orders. The maximum period of probation that may be imposed by courts of limited jurisdiction is increased from two years to five years. In sentencing for an offense involving domestic violence, courts of limited jurisdiction must consider whether:

- the defendant suffered a continuing pattern of coercion, control, or abuse by the victim of the offense and the offense is a response to that coercion, control, or abuse;
- the offense was part of an ongoing pattern of psychological, physical, or sexual abuse of a victim or multiple victims manifested by multiple incidents over a prolonged period of time; and
- the offense occurred within sight or sound of the victim's or the offender's minor children under the age of 18.

Treatment/Services for Perpetrators and Victims.

Any program that provides domestic violence treatment to perpetrators of domestic violence must be certified by the DSHS and meet minimum standards for domestic violence treatment purposes. The DSHS may conduct on-site monitoring visits of treatment programs, including reviewing program and management records, to determine the program's compliance with minimum certification qualifications and rules.

Under the Crime Victims' Compensation Program, a child may receive benefits, including counseling and treatment for distress arising from witnessing an act of domestic violence, if the child: (1) is under the age of 18; (2) resides with a person that is a victim of a domestic violence offense; (3) was a direct witness by sight or sound to the domestic violence offense; and (4) the offense was reported to law enforcement within 12 months of its occurrence or within 12 months of the time when a report could have reasonably been made. This eligibility for benefits applies to domestic violence offenses reported after July 1, 2010.

Human Remains Disposition.

A person who has been arrested for or charged with first or second degree Murder, Homicide by Abuse, or first or second degree Manslaughter by reason of the death of the decedent is prohibited from controlling the disposition of the decedent's remains. The right to control the disposition vests in an eligible person in the next applicable class listed in statute.

Substitute Bill Compared to Original Bill:

The substitute bill requires courts of limited jurisdiction to consider whether an offense involving domestic violence occurred within sight or sound of the victim's or the offender's minor children, instead of any minor children in the original bill. The substitute bill retains current law that permits an aggravating circumstance under the SRA if an offense involving domestic violence occurred within sight or sound of the victim's or the offender's minor children. The original bill allowed an aggravating circumstance if the offense was witnessed

by any minor children. The substitute bill requires a child under 16 who is petitioning the court for a protection order to seek relief through a parent or guardian.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill is the product of a domestic violence work group that met during the interim. The bill is a large piece of legislation designed to protect the victims of domestic violence. A number of changes are made to current law to help survivors of domestic violence navigate the legal system. The bill addresses making a police report when a victim is unable or unwilling to make a report in the jurisdiction where the crime occurred, which is a serious problem for victims who may have already left the place where the crime occurred because of safety concerns. The restriction on firearms included in the bill will help protect both victims of domestic violence and law enforcement officers. The provisions related to treatment services for children who witness domestic violence can help children break the cycle of violence. The bill makes a number of important changes to the laws concerning no-contact and protection orders, including permitting a court to prohibit the offender from cyber stalking a victim of domestic violence.

(With concerns) There is a high cost associated with expanding crime victims' compensation to children who witness domestic violence. Crime victims' compensation will run out of funding in April of this year, and there is current legislation to reduce these benefits. The requirement for the AOC to create a pattern form is unnecessary because the form already exists. Children under the age of 16 should not be able to petition the court for a protection order on their own behalf. The bill should be amended to require children under the age of 16 to petition the court through a parent or guardian ad litem. The bill does a good job of addressing victim defendants and standing to rescind a no-contact order, but the provisions concerning whether any child witnessed a domestic violence offense may be overbroad and cause unintended consequences. Extending probation to five years will have an impact on the courts and will increase offender recidivism due to increased legal financial obligations.

(Opposed) None.

Persons Testifying: (In support) Representative Goodman, prime sponsor; Chelle Hunsinger, Eastside Domestic Violence Program; Elisia Dalluge; and Grace Huang, Washington State Coalition Against Domestic Violence.

(With concerns) Dick Dorsett, Department of Labor and Industries; Steven Warning, Superior Court Judges Association; and Travis Stearns, Washington Defender Association.

Persons Signed In To Testify But Not Testifying: Rhonda L. Thompson.